

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

YOSEF AMIEL HANDY,	)	
	)	
Petitioner,	)	
	)	1:16CV1399
v.	)	1:05CR141-1
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

RECOMMENDATION AND ORDER  
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, has submitted a Motion [Doc. #201] to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This Motion cannot be further processed because court records reveal that Petitioner previously attacked the same conviction and sentence in a prior § 2255 motion (Case No. 1:08CV333). Consequently, Petitioner must move in the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current Motion, as required by 28 U.S.C. § 2255 and 28 U.S.C. § 2244. Because of this pleading failure, this particular Motion should be filed and then dismissed.<sup>1</sup>

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<sup>1</sup> The Court notes that, as set out in a prior Order and Recommendation [Doc. #194] related to a previous Motion by Petitioner, Petitioner's conviction in Count 3 for Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922(g)(1) is supported by a predicate conviction that is a North Carolina Class G felony and remains a felony even after United States v. Simmons. His Information of Prior Conviction under 21 U.S.C. § 851 is supported by the same predicate conviction. To the extent Petitioner seeks to assert some other claim, he would need to obtain authorization from the Court of Appeals as set out above.

IT IS THEREFORE RECOMMENDED that this action be filed and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS THEREFORE ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this Court and Motions for Authorization in the Court of Appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 3<sup>rd</sup> day of January, 2017.

/s/ Joi Elizabeth Peake  
United States Magistrate Judge